

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

TREVOR KEVIN BAYLIS,

Case No. C23-1653RSM

Plaintiff,

ORDER DENYING MOTIONS TO  
STRIKE DEFENSES

v.

VALVE CORPORATION,

Defendant.

This matter comes before the Court on Plaintiff Baylis's Motions to Strike Defenses, Dkts. #56 and #58. Plaintiff first moves to strike Defendant Valve Corporation's Ninth Defense, which states "Baylis' claims may be barred, in whole or in part, because the works alleged are not copyrightable for lack of originality." Dkt #56 (citing Dkt. #52 at 16). The second Motion asks to strike all the other defenses, arguing that certain defenses are baseless on the merits and that others are merely "boilerplate" and fail to satisfy the pleading standards set forth in *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007), and *Ashcroft v. Iqbal*, 556 U.S. 662 (2009). *See, e.g.*, Dkt. #58 at 10 ("these defenses are irrelevant and false"); Dkt. #58 at 13 (using phrase "boilerplate" and citing *Twombly* and *Iqbal*). Defendant opposes both Motions. Dkts. #71 and #72. Neither party requests oral argument.

1 Rule 12(f) permits the Court to “strike from a pleading an insufficient defense or any  
2 redundant, immaterial, impertinent, or scandalous matter.” Fed. R. Civ. P. 12(f). “Rule 12(f)  
3 motions to strike are generally disfavored because the motions may be used as delay tactics and  
4 because of the strong policy favoring resolution on the merits.” *Adan v. Swedish Health Servs.*,  
5 Case No. 2:23-cv-01266-TL, 2024 U.S. Dist. LEXIS 92865, 2024 WL 2398208, at \*4 (W.D.  
6 Wash. May 23, 2024). The purpose of the rule “is to avoid the expenditure of time and money  
7 that must arise from litigating spurious issues.” *Whittlestone, Inc. v. Handi-Craft Co.*, 618 F.3d  
8 970, 973 (9th Cir. 2010). An affirmative defense may be insufficient “as a matter of pleading or  
9 as a matter of law.” *Seattlehaunts, LLC v. Thomas Family Farm, LLC*, No. C19-1937 JLR, 2020  
10 WL 5500373, at \*4 (W.D. Wash. Sept. 11, 2020).

11 An affirmative defense must be pled in such a way that plaintiffs have “fair notice” of  
12 the defense, which generally requires that defendants state the nature and grounds for the  
13 affirmative defense. *Employee Painters’ Trust v. Pac. Nw. Contractors, Inc.*, 2013 WL  
14 1774628, at \*4 (W.D. Wash. Apr. 25, 2013). Although an affirmative defense is not required to  
15 meet the *Iqbal/Twombly* standard, it “must be supported by at least some facts indicating the  
16 grounds on which the defense is based.” *Grande v. U.S. Bank Nat’l Ass’n*, No. C19-333 MJP,  
17 2020 WL 2063663, at \*2 (W.D. Wash. Apr. 29, 2020).

18 Rule 12(g) states “[e]xcept as provided in Rule 12(h)(2) or (3), a party that makes a  
19 motion under this rule may not make another motion under this rule raising a defense or  
20 objection that was available to the party but omitted from its earlier motion.” Fed. R. Civ. P.  
21 12(g)(2). This Court’s Local Rules further state “[a]bsent leave of the court, a party must not  
22 file contemporaneous dispositive motions, each one directed toward a discrete issue or claim.  
23 LCR 7(e)(3).  
24

1 As an initial matter, Plaintiff has violated Rule 12(g) by filing two Rule 12(f) motions  
2 one day apart. The Court will substantively review both motions but warns Plaintiff against  
3 future failures to follow the Federal Rules of Civil Procedure and this Court's Local Rules.

4 The Court finds Plaintiff's repeated discussion of the merits improper for a Motion  
5 brought under Rule 12(f), which does not permit the Court to weigh evidence or dive into  
6 competing legal theories. Plaintiff's repeated citation to the *Twombly/Iqbal* pleading standard  
7 is also inapt; the Court will instead review these defenses for fair notice.

8 Defendant's Amended Answer lists nine "defenses" and eight "affirmative defenses."  
9 *See* Dkt. #54.

10 The Court does not understand why Defendant has written the first nine "defenses" as  
11 separate from "affirmative defenses;" some appear to repeat denials of infringement found  
12 earlier in the Answer, while others are more properly characterized as affirmative defenses.  
13 *See id.* at 15–16 ("Baylis' claims are barred because Valve has not infringed any of Baylis'  
14 alleged copyrights. . . . "Baylis' claims may be barred, in whole or in part, because the works  
15 alleged are not copyrightable for lack of originality.")

16 For all of the nine defenses except seven and nine, the Court finds these adequately  
17 pleaded given the remainder of the Answer and the proceedings in this case so far. *See* Dkt.  
18 #54. Plaintiff clearly understands and has fair notice of what Defendant will argue. These  
19 defenses either state, essentially, "we did not infringe" or "ownership of a valid copyright  
20 cannot be established." Although at times inartful, these are not redundant, immaterial,  
21 impertinent, or scandalous. Even if they were, Plaintiff has failed to show any prejudice, and  
22 the Court cannot conceive of any as Plaintiff will need to show infringement and ownership of  
23 a valid copyright to prove his case. The Court will not strike these defenses.

1 The Seventh Defense states “[t]o the extent Baylis seeks recovery of profits or revenues  
2 of Valve arising from its sale or distribution of the video game alleged here, no such profits or  
3 revenues were attributable to or can be allocated or apportioned based upon the infringement  
4 Baylis alleges.” *Id.* at 16. This is an affirmative defense. Plaintiff fails to adequately explain  
5 why this defense should be stricken, other than to say it is “irrelevant and false.” *See* Dkt. #58  
6 at 10. The Court finds that Plaintiff has failed to meet his burden and this defense is not  
7 insufficient, redundant, immaterial, impertinent, or scandalous.

8 The Ninth Defense is the subject of the separate Motion at Dkt. #56. In that Motion,  
9 Plaintiff improperly asks the Court to rule on the merits, taking into consideration exhibits  
10 attached to a declaration and weighing domestic and European case law. *See* Dkts. #56 and  
11 #57. Plaintiff’s statements in briefing that he “is a high-end professional 3D artist and animator  
12 with decades of experience” who “can recreate the works in question” and who has “offered to  
13 demonstrate” such over Zoom is particularly demonstrative of his confusion about the  
14 applicable legal standards for a rule 12(f) Motion. *See* Dkt. #56 at 10. Disputes of fact are not  
15 something the Court can consider for this Motion, and live demonstrations will have to be  
16 saved for trial. Defendant has adequately explained how originality may become an issue in  
17 this case. *See* Dkt. #71 at 5. Plaintiff has not otherwise convinced the Court that this defense is  
18 redundant, immaterial, impertinent, or scandalous.

19 Turning to the other Affirmative Defenses, Plaintiff repeatedly argues disputed facts  
20 and legal merits, rather than the adequacy of pleadings. *See, e.g.,* Dkt. #58 at 11 (“previous  
21 litigation in Finland has demonstrated that the Iron Sky Producers do not actually have a valid  
22 Chain of Title to claim ownership of the film Iron Sky”); Dkt. #58 at 12–13 (“it is Valve who  
23 have failed to mitigate their own damages.... Valve is not eligible for DMCA Safeharbour [sic]  
24 provisions under U.S.C 17§512(C) because the DMCA safe harbors shield online service

1 providers from liability only if they do NOT have actual or ‘red flag’ knowledge of  
2 infringement...”). These arguments are premature and fail under the above legal standards.

3 Plaintiff also asserts that several affirmative defenses (third, fourth, fifth, sixth, seventh,  
4 and eighth) are boilerplate or otherwise contain insufficient detail to put him on notice. *Id.* at  
5 13–14. This is an appropriate basis to strike an affirmative defense under Rule 12(f).  
6 However, the Court has carefully reviewed the above defenses and finds that each contains  
7 adequate information to put Plaintiff on fair notice with “at least some facts indicating the  
8 grounds on which the defense is based.” *See Grande, supra*. The Third Affirmative Defense  
9 argues that Plaintiff engaged in “fraudulent conduct and misrepresentations used in connection  
10 with obtaining a United States copyright registration” and incorporates by reference the facts,  
11 arguments, and exhibits set forth in the prior Motion to Refer Copyright Registration Questions  
12 to the Register of Copyrights and for Stay of Proceedings, Dkt. #43. Dkt. #54 at 17. Plaintiff  
13 demonstrates he knows what Defendant is talking about by briefing an argument attacking the  
14 substantive merits of this defense with references to a specific previous court case. *See* Dkt.  
15 #58 at 13. The Fourth Affirmative Defense does not just say that damages may have been  
16 proximately caused by third parties, it lists potential third parties as “videogame developers,  
17 *Iron Sky* film producers, and Baylis’ employers.” Dkt. #54 at 17. This is sufficient. The Fifth  
18 Affirmative Defense states that “Baylis’ alleged work is such an insubstantial portion of the  
19 alleged infringing work that they are either de minimis or permitted as fair use.” *Id.* This  
20 refers to a specific infringing work and adequately puts Plaintiff on notice. The Sixth  
21 Affirmative Defense explains, in detail, how res judicata and collateral estoppel could apply  
22 here, citing a prior court decision in Finland and describing that decision. *See id.* at 18. This is  
23 sufficient. The Seventh Affirmative Defense is for the statute of limitations and laches,  
24 pleading that “Baylis has failed to timely assert his alleged claims within three years after his

1 alleged claims accrued.” *Id.* This set forth a specific time limit and is sufficient to put Plaintiff  
2 on fair notice. The Eighth Affirmative Defense, nearly half a page long, asserts “the doctrines  
3 of waiver, estoppel, ratification, accord and satisfaction, unclean hands and/or other equitable  
4 doctrines.” *Id.* at 18–19. It refers to prior proceedings involving Plaintiff and copyright  
5 ownership in *Iron Sky* and incorporates by reference the facts, arguments, and exhibits set forth  
6 in the prior Motion to Refer Copyright Registration Questions to the Register of Copyrights and  
7 for Stay of Proceedings. *Id.* This is sufficient.

8 Accordingly, having reviewed the briefing of the parties and the remainder of the  
9 record, the Court hereby FINDS and ORDERS that Plaintiff Baylis’s Motions to Strike  
10 Defenses, Dkts. #56 and #58, are DENIED.

11 DATED this 30<sup>th</sup> day of July, 2025.

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14 RICARDO S. MARTINEZ  
15 UNITED STATES DISTRICT JUDGE  
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